
MAR 22 2019

Approved by
Ford Mary-Ellen Valkenier, RDG Maritimes Region

Docket #: 2019-009-00154
Security Classification: UNCLASSIFIED

SCENARIO NOTE FOR THE DEPUTY MINISTER

MEETING WITH CLEARWATER

Date and Location of Meeting

Thursday, March 28, 2019, 1:00-2:00 PM

Ron Trites Boardroom, Bedford Institute of Oceanography, Dartmouth, N.S.

Attendees

 of Clearwater Seafoods Incorporated

(Clearwater)

Additional attendees to be confirmed.

Stakeholder Objectives

- Clearwater may inform you of the details related to their recent announcement of a 50-year agreement between itself and 14 First Nations in Nova Scotia (N.S.) and Newfoundland (N.L.) and Labrador for Arctic surfclam.
- Section 115.2 of the *Atlantic Fishery Regulations* (AFRs) requires that gear be tended at least every 72 hours. The Department is considering amending this regulation. Clearwater may express concern with the time it is taking the Department to move this forward given implications for their offshore lobster fishery.
- Clearwater may also want assurance that the Department continues to support them conducting scientific studies of the effects of different soak times on the catch. A proposal to conduct these studies is currently being reviewed by the Department.

Departmental Objectives

- In response to Clearwater's new agreement with 14 First Nations, your objective is to learn more about the partnership.
- With respect to the regulatory amendment, your objective is to inform Clearwater that work on this is proceeding but must be balanced with work on other regulatory priorities. Your objective is also to remind Clearwater that, in the meantime, the existing regulation remains in effect and that they are expected to comply with it.
- With respect to scientific studies, your objective is to advise Clearwater that their proposal is being reviewed by the Department and that the Department remains committed to working with them on a management framework for their lobster fishery that both maximizes economic opportunities and satisfies conservation objectives.

s.19(1)

Unclassified

Key Points to Register

Arctic Surfclam Access and Allocation

- On March 11, 2019, Clearwater and 14 First Nations in N.S. and N.L. announced a 50-year partnership agreement. According to Clearwater's website the partnership aims to protect existing jobs in the Arctic surfclam fishery while creating economic, employment and capacity building benefits for First Nations adjacent to the clam resource. The partners also commit to work together on any upcoming DFO Expression of Interest process.
- The Department is committed to pursuing a path forward in addressing socioeconomic disadvantages and meaningfully advancing reconciliation. In this respect, we wish to take the time needed to make an appropriate and reasonable decision that moves the surfclam file forward so that the fourth licence will be fishable in 2020.
- The Department is committed to open and transparent science based processes for the continued sustainable management of the Arctic surfclam stocks.

Gear Tending in the Offshore Lobster Fishery

- Currently, Section 115.2 of the AFRs requires that fishing gear be tended at least every 72 hours. The purpose is to minimize gear loss, gear conflict and spoilage of the catch.
- Clearwater has argued that longer soak times are needed in their offshore lobster fishery in order to meet economic objectives.
- The Department has agreed that having the flexibility to allow longer soak times could be worthwhile if it can be shown that the purpose of the existing regulation would not be compromised or could be achieved through other means.
- However, until such time as the regulation is amended, all fisheries in Atlantic Canada remain subject to the 72-hour requirement, including Clearwater.
- In September 2018, Clearwater pled guilty and was convicted for leaving their lobster gear untended for 17 consecutive days on one occasion, and 31 on another.

Issuance of a Scientific Licence to Clearwater

- The Department is reviewing a research proposal submitted by Clearwater for conducting studies of the effects of different soak times on the catch under a scientific licence. The proposal is being considered carefully given significant and ongoing non-compliance in the fishery.

Considerations

- The Department is pursuing an amendment to section 115.2 of the AFRs that would provide flexibility on a fishery-by-fishery basis to consider alternative gear tending requirements, where appropriate. It has been added to the forward regulatory plan for 2019-2021.
- Mark Dobson, President of the Eastern Provinces Council of the United Food and Commercial Workers Union, which represents fishers and some processors employed by Clearwater, recently contacted the DFO Maritimes Region Director of Conservation and Protection (C&P). Mr. Dobson stated that continued "harassment" of Clearwater by C&P Maritimes Region over the enforcement of the 72-hour gear-tending regulation may result in full-time jobs being changed to seasonal jobs or lay-offs. His opinion is that C&P is arbitrarily enforcing this regulation now, after ignoring it for many years.

Unclassified

However, the Department and Clearwater have been communicating about compliance issues since 2015 and the Department made multiple attempts to achieve compliance prior to taking court action.

Background

Clearwater

Clearwater is a publicly-traded, vertically integrated Canadian corporation with subsidiaries in the United States, the United Kingdom and Argentina. Their head office is in Bedford, N.S. Clearwater is North America's largest vertically integrated harvester, processor and distributor of shellfish, and the largest shellfish quota and licence holder within Canada. Species harvested and processed by Clearwater include Canadian sea scallop, Argentine scallop, lobster, Arctic surfclam, shrimp, snow crab, and turbot.

Clearwater employs approximately 1,300 employees in Atlantic Canada and Argentina. Net sales for the company in 2017 were \$621 million, \$109 million of which were clam sales. [REDACTED] of the company's surfclam landings were at Mulgrave, N.S., with [REDACTED] at Grand Bank, N.L. Sales by other major species include scallops, lobster and coldwater shrimp. Clearwater sources about 85% of its lobster from Canadian inshore harvesters. Over the last few years, the company has invested approximately [REDACTED] in new factory freezer vessels for clam. Clearwater has invested in seabed mapping and utilizes multi-beam sonar to aid in efficient harvesting.

Arctic Surfclam Access and Allocation

Clearwater holds all three surfclam licences in Atlantic Canada. This fishery was assessed through Marine Stewardship Council (MSC) and has been certified as a sustainably managed fishery.

Clearwater originally opposed new entrants in the Arctic surfclam fishery given the company's investment in the fishery, the difficulty in opening new markets, the price sensitivity of surfclam to additional supply, and the vulnerability of surfclam to exploitation.

In September 2017, Minister LeBlanc announced his intention to introduce a fourth licence for Arctic surfclam representing 25% of the Total Allowable Catch for that fishery. In February 2018, Minister LeBlanc announced that a new licence would be issued to the Five Nations Clam Company. In July 2018, the issuance of a fourth surfclam licence was cancelled. In August 2018, Minister Wilkinson directed the Department to develop a plan to launch a new 2018 Expression of Interest (EOI) that would engage an independent third party to assess submissions based on clear criteria that includes specific and significant benefits for Indigenous communities and the proponent's readiness to proceed with the fishery in 2020.

However, Indigenous groups have expressed dissatisfaction with EOI processes, which they view as pitting groups against one another. Awarding the licence under this approach will be contentious, and an alternative means of providing access and awarding the licence is currently being considered.

On March 11, 2019, Clearwater and 14 First Nations in N.S. and N.L. announced a 50-year partnership agreement. According to Clearwater's website the partnership aims to protect

s.20(1)(b)

Page 3 of 10

Unclassified

existing jobs in the Arctic surfclam fishery while creating economic, employment and capacity building benefits for First Nations adjacent to the clam resource. The department is working to schedule a meeting with Clearwater to learn more about the details of the partnership agreement.

Recent Clearwater Guilty Plea

Section 115.2 of the AFRs requires that fishing gear be tended at least every 72 hours. Other regulatory provisions under the *Fisheries Act* require that gear be marked at the surface, and that gear be removed from the water when it is no longer being fished. In November 2014, an investigation was initiated into Clearwater's compliance with these regulations under its offshore lobster licences.

The Department met with Clearwater over the course of 2015 and 2016 regarding compliance issues. It was agreed that there may be merit in amending regulations to allow more flexibility in gear tending timeframes where the objectives of the regulation would not be compromised or could be achieved through other means. The Department also developed a workplan with Clearwater to carry out the necessary scientific studies to support a decision about alternative soak times, possibly in the 3-10 day range, should the regulation eventually be amended. However, the Department advised Clearwater that in the meantime the 72-hour requirement would continue to apply. The Department also advised Clearwater that the regulations did not allow for the storage of gear at sea and that this practice must be discontinued.

On September 20, 2018 CS MANPAR INC, an entity of Clearwater Seafoods Limited Partnership, pled guilty and was convicted for failure to tend their gear every 72 hours as per section 115.2 of the AFRs. The company was required to pay a fine of \$30,000 within 60 days of sentencing. To give context to the scale of this issue, a set of traps was left untended for 17 days and then, in a subsequent violation, 3,800 traps were left untended for at least 35 days [REDACTED]

Prior to taking court action, there were additional attempts made by DFO to achieve compliance. On June 3, 2016, C&P delivered a presentation to Clearwater outlining that leaving fishing gear unattended for long periods of time is contrary to the *Fisheries Act* and its regulations. On August 16, 2016, a letter was issued to [REDACTED]

[REDACTED] reinforcing this statement and explaining that failure to comply could result in enforcement action. Despite these efforts, C&P determined that the FV Randell Dominaux was still acting in non-compliance.

Clearwater holds the only licence to the offshore lobster fishery (Lobster Fishing Area 41), which is an MSC certified fishery. The next annual MSC audit is planned for April 2019. It is expected that this conviction, as well as overall compliance in the fishery, will be reviewed as part of the process. Inshore lobster fishers harvest lobsters adjacent to this area and are obligated and expected to land their traps within 72 hours.

Since the conviction, officers are still noting concerns with the gear tending practices of the FV Randell Dominaux and met with [REDACTED] on October 26, 2018 reiterating the regulatory requirements. At that same meeting, officers also identified compliance issues with delinquency of log submissions.

s.19(1)
s.21(1)(b)

Unclassified

Follow Up

No information has been removed or severed from this page

Unclassified

Appendix 1: Socio-economic overview of the Offshore Arctic Surfclam Fishery

The Arctic surfclam fishery provides important economic benefits in Atlantic Canada, particularly in the offshore harvesting sectors off of Nova Scotia (N.S.) and Newfoundland & Labrador (N.L.), as well as on shore with further processing, marketing and distribution activities.

As of 2018, the commercial harvest of Arctic surfclam has occurred on Grand Bank and Banquereau Bank for about 30 years, growing from an exploratory fishery in the late 1980s into an established commercial fishery with a more formalized enterprise allocation management regime by 1995.

The fishery provides employment in both N.S. and eastern N.L. for people working on board large factory freezer trawlers, as well as additional employment with shore-based value-added processing.

Additional economic activity and employment is generated through administration, marketing and distribution of Arctic surfclam products, as well as production from incidental catch in the fishery, such as cockles and propeller clams.

Indirect economic benefits associated with the Arctic surfclam fishery result from the associated investment in technology, gear and equipment, fuel and other costs associated with harvesting. Induced economic benefits from this fishery are realized in the Atlantic region through the spending of wages in the economy by people directly employed and other related spending.

Exports

While Canadian export data does specify "Stimpson's surfclam" (i.e. Arctic surfclam) in species and product categories, it appears that a significant portion of product in the export data may not be labeled accurately enough to relate to this particular fishery. Therefore, the figures shown in this section relate to the export of all clam species and related product categories from all sources and fisheries. The vast majority of the clam export value is thought to relate to the offshore fishery.

The value of Canadian Atlantic clam exports¹ averaged about \$60 million during the period 2000 to 2017, reaching a high of \$103 million in 2017². Over 80% of the clam export value is frozen product.

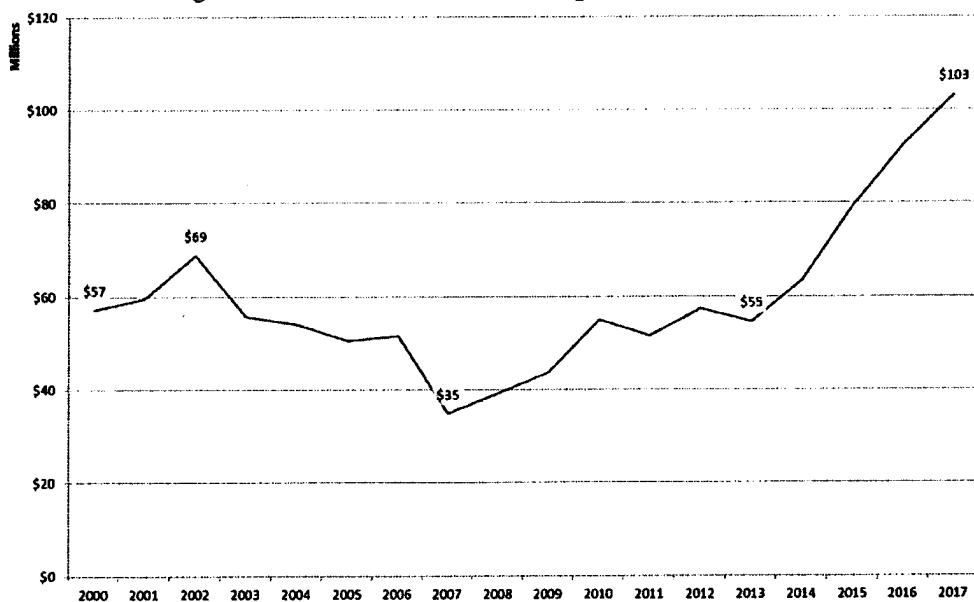
Please see Figure 1 for Total Canadian Atlantic clam export value from 2000 to 2017.

¹ Exports of clam from Newfoundland & Labrador, Nova Scotia, New Brunswick, Prince Edward Island and Quebec

² Data source: DFO Economic Analysis & Statistics

Unclassified

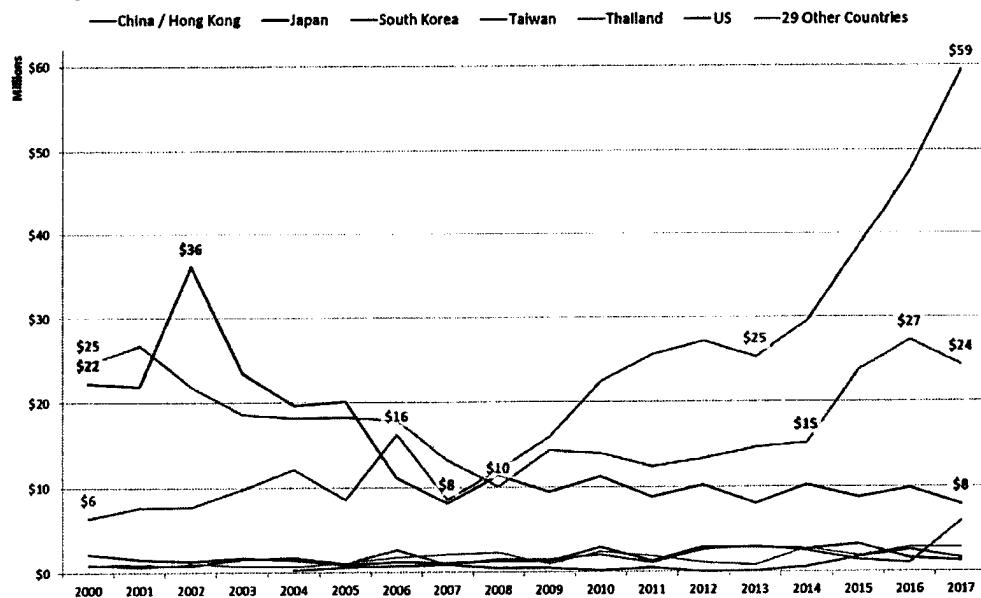
Figure 1: Atlantic Canadian Clam Export Value, 2000-2017



China and Hong Kong have become the most important market destination by value for Canadian Atlantic clam exports. Exports to these markets rose from below \$10 million in 2007 to about \$59 million by 2017.

Exports to Japan reached a high during the period of \$36 million in 2002 before declining to about \$8 million by 2007 and then remaining relatively stable at that level through 2017. The U.S. market has remained relatively stable over the period, averaging around \$18 million. Please see Figure 2 for Canadian Atlantic clam export value by market destination from 2000 to 2017.

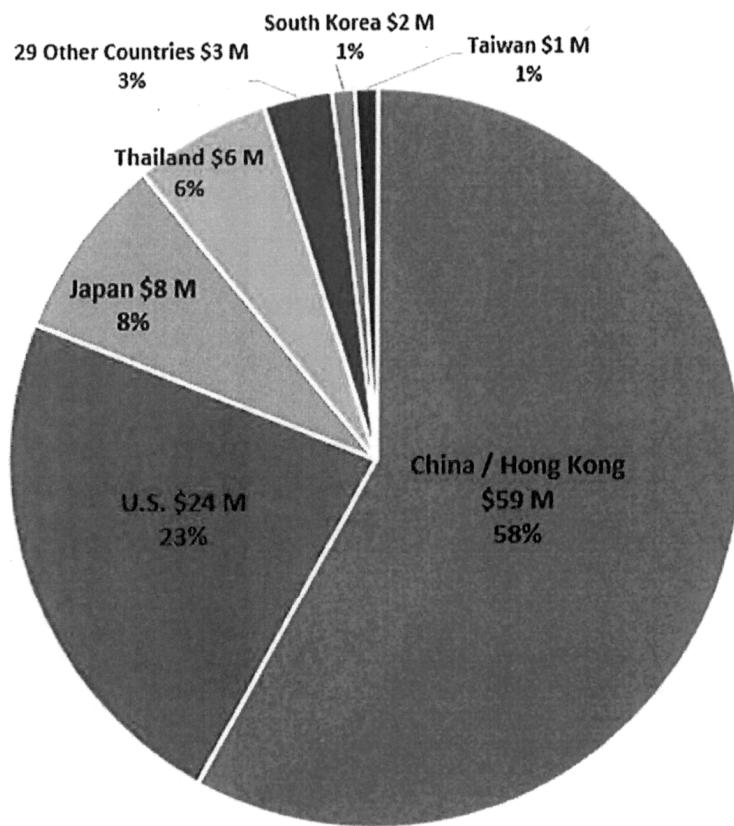
Figure 2: Canadian Atlantic Clam Export Value by Market Destination, 2000-2017



Unclassified

Figure 3 displays 2017 Canadian Atlantic clam export value by market destination, and shows the importance of the China and Hong Kong markets. The U.S. and Japan were the next most important markets in 2017 with 23% and 8% respectively.

Figure 3: Atlantic Canadian Clam Export Value by Market Destination, 2000-2017



Unclassified

Appendix 2: Grand Bank Surfclam Science

In 2016, a spatial assessment model for Arctic surfclam on Banquereau Bank was developed through a departmental Science Framework meeting. The model estimates biomass and potential harvest levels for Banquereau, but there was insufficient information for Grand Bank to allow a similar modeling approach to be applied to that area.

In May 2018, DFO Science completed a stock status update via a Science Response Process for Arctic surfclam on Banquereau and Grand Bank surfclam. Secondary indicators for Grand Bank are monitored annually until a Framework and survey can be completed for that area. The 2018 Science Response showed that the secondary indicators for Grand Bank were in a positive position relative to the set thresholds, demonstrating that stock status has not changed.

DFO held an Offshore Clam Advisory Committee meeting on October 26, 2018. Clearwater, as the only current licence holder, recommended adhering to the science advice and advised that a roll-over of the Grand Bank Total Allowable Catch was pragmatic as there was no new biomass advice for Grand Bank. Ocean Choice International requested a review of the science advice for Grand Bank.

The Department has developed a Memorandum of Understanding, signed by both the Department and Clearwater, that outlines a collaborative science plan that will be applied to both Banquereau and Grand Bank. Research under the science plan will focus on a number of areas, including: conversion factors used to convert landed product to the round weights used for quota monitoring and science, fecundity at size, spawning cycle, growth rates, and condition (weight at size).

The science plan also includes developing a stock assessment methodology for Grand Bank which will address concerns that have been raised about the current approach to Grand Bank. A new assessment methodology for Grand Bank will, as with Banquereau, rely on fishery dependent data, as that is the only data source that is continuous and on-going.

There is currently no survey planned for Grand Bank. Grand Bank was last surveyed in three parts over four years from 2006 to 2009. A survey on Grand Bank is expensive, and challenging due to the size of the area (49,473 km²), and the lack of an appropriate vessel with a hydraulic dredge with which to conduct the survey.

Unclassified

Appendix 3: Regulations Keeping Pace with Advancements in Fishing Technology and Practices

Clearwater has a significant interest in fixed gear fisheries, notably lobster, and the Department's approach to managing risks that fixed gear fisheries present to North Atlantic right whales and other incidental catch. The adequacy of the approach may affect access to export markets and the eligibility of fisheries to maintain eco-certification.

Clearwater has previously expressed concern about some of the regulations pursuant to the *Fisheries Act* that they believe inhibit experimentation with alternative fishing methods and technologies and the speed at which the Department has been able to modify these in order to keep pace with advancements in the industry. In particular, there is concern that the requirements under the *Fishery (General) Regulations* to mark both ends of fixed gear (Section 27(6)) and to mark fixed gear at the surface of the water (Section 27(2)) may be resulting in an unnecessary amount of rope in the water column and, as a result, may pose greater risks to marine mammals.

In addition, Clearwater has an interest in greater flexibility in gear tending requirements. Section 115.2 of the AFRs requires that fixed gear be tended at least every 72 hours. Clearwater has been attempting to tend gear at least every 360 hours (5 times the legal limit). They would have to reduce the number of traps in the water or put more boats in service in order to comply with the regulations. Clearwater has stated that more flexibility should be available in gear tending where the conservation and management objectives of this regulation can be met through other means. Clearwater (redacted) recently met with representatives from DFO Maritimes Region (the Associate Regional Director General and representatives from Fisheries Management) to discuss this issue in particular, given the recent legal issues.

The Department is considering a number of amendments to regulations, including amendments to section 115.2 of the AFRs. Section 115.2 currently states: "No person shall leave fishing gear unattended in the water for more than 72 consecutive hours". The objectives of this regulation are to minimize loss of fishing gear, incidental mortality, the potential for gear conflict, and spoilage of catch. However, as fisheries change, new fisheries develop, and new science becomes available, alternative strategies may enable these objectives to be effectively met through other means, while also better accommodating the operational and safety needs of a fishery – thus the reason for consideration of amending this regulation.

The objective of the proposed amendment to section 115.2 of the AFRs is to provide for flexibility on a fishery-by-fishery basis to consider alternative gear tending requirements, where appropriate. Longer or shorter "soak times" (the amount of time gear can be left in the water) could be authorized, to meet operational requirements, safety requirements, and possibly other management objectives. Authorization for a variation in gear tending requirements would follow the usual process for management decisions in a given fishery, e.g. requesting science advice through the Canadian Science Advisory Secretariat (CSAS), discussion with stakeholders/rights holders through the fishery advisory committee, and decision by DFO.

s.19(1)



Fisheries and Oceans Canada
Correspondence Routing Slip

Fiche d'acheminement de correspondance
Pêches et Océans Canada

CLASSIFICATION

GCCMS #: 2019 009 00154

EKME #: 4033459

To: Timothy Sargent
Pour:

Date:

Object: MEETING WITH CLEARWATER
Objet:

From / Mark Craig for Kerri Graham, Regional Director Policy and Economics,
De: Maritimes Region

Via: Mary-Ellen Valkenier, Regional Director General, Maritimes Region

Additional approvals:

Autre(s) approbation(s):

Stephen Sharzer,
Senior General Counsel and Head,
Legal Services

*Approved with
Changes indicated*
MAR 21 2019
MAR 22 2019
Sylvie Lapointe
Assistant Deputy Minister
Fisheries and Harbour Management

Material for the Minister
Documents pour le Ministre Your Signature
Votre signature Information

Remarks: This briefing note was developed in consultation with the following

Remarques: sectors/regions: Fisheries and Harbour Management (NHQ), Legal
Services (NHQ), Fisheries Management (Maritimes)

Distribution: Please indicate name of people to receive a copy and if prior or following
the DM approval.

**Drafting Officer/
Rédacteur:**

Kaitlin Stansfield (902-717-1457) / Kerri Graham / cc



**Fisheries and Oceans Canada
Correspondence Routing Slip**

Fiche d'acheminement de correspondance
Pêches et Océans Canada

CONFIDENTIAL
GCCMS #: 2019-FHM-00094
EKME #: 4036857

To: Timothy Sargent
Pour:

Date:

Object: **SURF CLAM: CLEARWATER-INDIGENOUS PARTNERSHIP**
Objet:

From / Adam Burns, Director General, Fisheries Resource Management
De:

Via: Sylvie Lapointe, Assistant Deputy Minister of Fisheries and Harbour Management

Additional approvals:

Autre(s) approbation(s):

1

Material for the Minister Documents pour le Ministre

10

Your Signature
Votre signature

X

Information

Remarks: Developed in consulted with Maritimes Region, Strategic Policy and
Remarques: DFO/Legal Services Unit.

Distribution:

Drafting Officer/

Rédacteur: David Whorley / AE



Fisheries and Oceans
Canada

Deputy Minister

Pêches et Océans
Canada

Sous-ministre

Document Released Under the Access to
Information Act / Document divulgué en vertu
de la Loi sur l'accès à l'information.

CONFIDENTIAL

2019-FHM-00094
EKME #:4036857

MEMORANDUM FOR THE MINISTER

**SURF CLAM: CLEARWATER-INDIGENOUS PARTNERSHIP
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to inform you of some preliminary details of the surf clam partnership arrangement between Clearwater Seafoods and 14 Indigenous communities.

Clearwater Seafoods recently announced that it had entered into a 50-year Offshore Clam Resource Sharing Agreement (the Agreement) with Miawpukek First Nation in Newfoundland and Labrador, and Nova Scotia's 13 Mi'kmaq communities related to the possible issuance of a fourth surf clam licence by the Department of Fisheries and Oceans (DFO).

To date, the Agreement was not shared with DFO. Only an overview of the key terms of the Agreement was provided to DFO. Based on this overview, it is DFO's understanding that the Agreement provides for revenue sharing, employment and training and development for the Indigenous participants.

The
Agreement allegedly provides that the Indigenous communities would retain the control of the rights and privileges conferred under the licence.

Given that the Indigenous participants include those communities spanning two provinces, the partnership may offer a path forward to advance DFO's socio-economic fisheries management objectives, including the Government's reconciliation agenda, on this file.

DFO officials will seek further details on the Agreement and assess the views of participating First Nations communities with respect to it, and return with options and recommendations to enhance Indigenous participation in this fishery.

s.20(1)(b)

CONFIDENTIAL

- 2 -

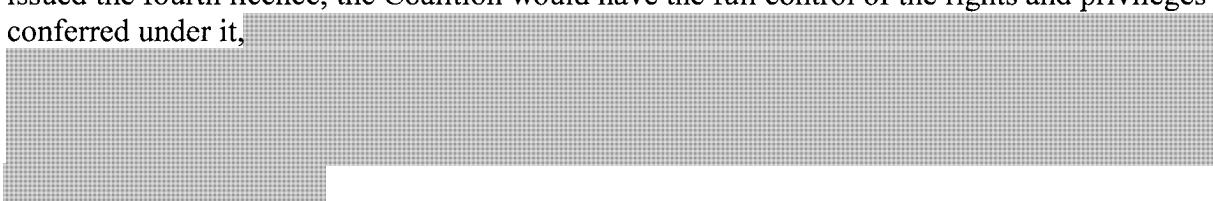
BACKGROUND

On March 11, 2019, Clearwater Seafoods announced that it had entered into an agreement with Nova Scotia's 13 Mi'kmaq communities, as represented by the Assembly of Nova Scotia Mi'kmaq Chiefs, and Miawpukek First Nation in Conne River, Newfoundland and Labrador.

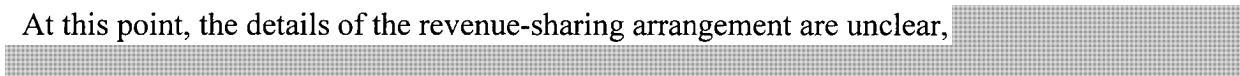
DFO has obtained an overview of the key terms of the Agreement (tab 1).

Clearwater's partners are made up of all of the Nova Scotia Mi'kmaq communities, which includes the communities most adjacent to the surf clam resource, and Miawpukek First Nation of Newfoundland and Labrador. Under the Agreement, the Indigenous participants would form a wholly-owned entity to be called "the Coalition".

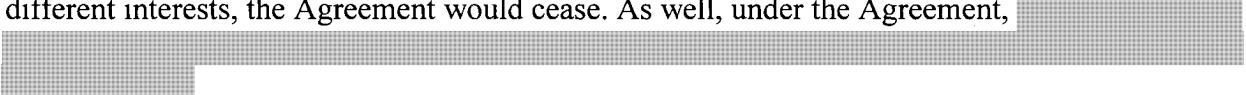
The overview provides that the Agreement would be valid for a period of 50 years, and took effect January 1, 2019. Alleged terms of the Agreement provide that, were the Coalition to be issued the fourth licence, the Coalition would have the full control of the rights and privileges conferred under it,



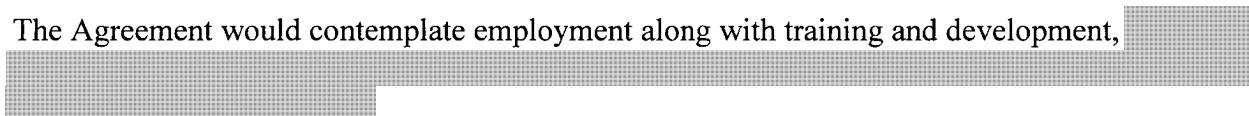
At this point, the details of the revenue-sharing arrangement are unclear,



The Agreement would position Clearwater's Indigenous partners to be issued the fourth surf clam licence, either through an expression-of-interest (EOI) process or via an alternative process as may be determined by DFO. Should DFO eventually decide to issue the fourth licence to different interests, the Agreement would cease. As well, under the Agreement,



The Agreement would contemplate employment along with training and development,



DFO has no details on the employment and training provisions, though in a recent media interview Clearwater's Vice President of Sustainability and Public Affairs underlined the demographic challenges the fishing sector faces with respect to an aging workforce. It appears that with regard to employment opportunities for First Nations, Clearwater would proceed via attrition and growth opportunities in selecting Indigenous candidates for positions as they become available. Indigenous employment would involve both on- and off-the-water jobs.



s.20(1)(b)

s.21(1)(a)

s.21(1)(b)

STRATEGIC CONSIDERATIONS:

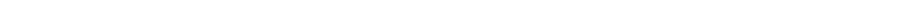
The optimal path forward for awarding a fourth surf clam licence remains unclear. In August 2018, DFO publicly committed to “launching a new Expression of Interest process to identify a holder for the fourth license for this fishery in the spring of 2019, so that the participant can begin fishing the new license in 2020. An independent third-party will evaluate the submissions, and make recommendations to Fisheries and Oceans Canada.”

While moving forward with a further EOI process remains a possibility, First Nations have been critical of the EOI approach as something that pits groups against one another, suggesting that alternative processes that are less conflictual are preferred.

As demonstrated in the Clearwater Agreement, there is some potential for encouraging industry and Indigenous interests to work together to advance DFO’s socio-economic fisheries management objectives, including the Government’s reconciliation agenda, something that could help address Indigenous concerns around increased access, and industry’s desire for stability and predictability.

There likely remains some expectation from other fishing companies and other First Nations that there will be an opportunity to be considered for the issuance of a fourth surf clam licence, and any path forward will have to consider the associated risks.

DFO has not yet canvassed the Indigenous partners to assess their views in detail about the partnership, though some media coverage seems to indicate substantial support for it.



INTERDEPARTMENTAL CONSULTATIONS

The Department of Justice was consulted in the development of this memorandum.

NEXT STEPS

DFO officials will seek further details on the Agreement, assess the views of participating Indigenous communities, and will return with options.



s.21(1)(a)
s.21(1)(b)

Timothy Sargent
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (1)

1. Offshore Clam Resource Sharing Agreement – Overview of Key Terms

**Pages 16 to / à 21
are withheld pursuant to sections
sont retenues en vertu des articles**

20(1)(b), 20(1)(c)

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Fisheries and Oceans Canada
Correspondence Routing Slip

Fiche d'acheminement de correspondance
Pêches et Océans Canada

CONFIDENTIAL
GCCMS #: 2019-FHM-00094
EKME #: 4036857

To: Timothy Sargent
Pour: Date:

Object: **SURF CLAM: CLEARWATER-INDIGENOUS PARTNERSHIP**
Objet:

From / Adam Burns, Director General, Fisheries Resource Management
De:

Via: Sylvie Lapointe, Assistant Deputy Minister of Fisheries and Harbour
Management

02 AVR. 2019

Additional approvals:

Autre(s) approbation(s):

Stephen Sharzer
Senior General Counsel

*BS Approved with
changes indicated*

Material for the Minister
Documents pour le Ministre

Your Signature
Votre signature

Information

Remarks: Developed in consulted with Maritimes Region, Strategic Policy and
Remarques: DFO/Legal Services Unit.

Distribution:

Drafting Officer/

Rédacteur: David Whorley / AE



Fisheries and Oceans
Canada

Deputy Minister

Pêches et Océans
Canada

Sous-ministre

CONFIDENTIAL

2019-FHM-00094

MEMORANDUM FOR THE MINISTER

**SURF CLAM: CLEARWATER-INDIGENOUS PARTNERSHIP
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to inform you of some preliminary details of the surf clam partnership arrangement between Clearwater Seafoods and 14 Indigenous communities.

Clearwater Seafoods recently announced that it had entered into a 50-year Offshore Clam Resource Sharing Agreement (the Agreement) with Miawpukek First Nation in Newfoundland and Labrador, and Nova Scotia's 13 Mi'kmaq communities related to the possible issuance of a fourth surf clam licence by the Department of Fisheries and Oceans (DFO).

To date, the Agreement was not shared with DFO. Only an overview of the key terms of the Agreement was provided to DFO. Based on this overview, it is DFO's understanding that the Agreement provides for revenue sharing, employment and training and development for the Indigenous participants.

The overview indicates that the Agreement provides that the Indigenous communities would retain the control of the rights and privileges conferred under the licence.

Given that the Indigenous participants include those communities spanning two provinces, the partnership may offer a path forward to advance DFO's socio-economic fisheries management objectives, including the Government's reconciliation agenda, on this file.

DFO officials will seek further details on the Agreement and assess the views of participating First Nations communities with respect to it, and return with options and recommendations to enhance Indigenous participation in this fishery.

s.20(1)(b)

Canada

.../2

BACKGROUND

On March 11, 2019, Clearwater Seafoods announced that it had entered into an agreement with Nova Scotia's 13 Mi'kmaq communities, as represented by the Assembly of Nova Scotia Mi'kmaq Chiefs, and Miawpukek First Nation in Conne River, Newfoundland and Labrador.

DFO has obtained an overview of the key terms of the Agreement (tab 1).

Clearwater's partners are made up of all of the Nova Scotia Mi'kmaq communities, which include the communities most adjacent to the surf clam resource, and Miawpukek First Nation of Newfoundland and Labrador. Under the Agreement, the Indigenous participants would form a wholly-owned entity to be called "the Coalition".

The overview provides that the Agreement would be valid for a period of 50 years, and took effect January 1, 2019. The overview indicates that the terms of the Agreement provide that, were the Coalition to be issued the fourth licence, the Coalition would have the full control of the rights and privileges conferred under it, [REDACTED]

At this point, the details of the revenue-sharing arrangement are unclear, [REDACTED]

The Agreement would position Clearwater's Indigenous partners to be issued the fourth surf clam licence, either through an expression-of-interest (EOI) process or via an alternative process as may be determined by DFO. Should DFO eventually decide to issue the fourth licence to different interests, the Agreement would cease. As well, under the Agreement, [REDACTED]

The Agreement would contemplate employment along with training and development, [REDACTED]

DFO has no details on the employment and training provisions, though in a recent media interview Clearwater's Vice President of Sustainability and Public Affairs underlined the demographic challenges the fishing sector faces with respect to an aging workforce. It appears that with regard to employment opportunities for First Nations, Clearwater would proceed via attrition and growth opportunities in selecting Indigenous candidates for positions as they become available. Indigenous employment would involve both on- and off-the-water jobs.

s.20(1)(b)

s.21(1)(a)

s.21(1)(b)

STRATEGIC CONSIDERATIONS:

The optimal path forward for awarding a fourth surf clam licence remains unclear. In August 2018, DFO publicly committed to “launching a new Expression of Interest process to identify a holder for the fourth license for this fishery in the spring of 2019, so that the participant can begin fishing the new license in 2020. An independent third-party will evaluate the submissions, and make recommendations to Fisheries and Oceans Canada.”

While moving forward with a further EOI process remains a possibility, First Nations have been critical of the EOI approach as something that pits groups against one another, suggesting that alternative processes that are less conflictual are preferred.

As demonstrated in the Clearwater Agreement, there is some potential for encouraging industry and Indigenous interests to work together to advance DFO’s socio-economic fisheries management objectives, including the Government’s reconciliation agenda, something that could help address Indigenous concerns around increased access, and industry’s desire for stability and predictability.

There likely remains some expectation from other fishing companies and other First Nations that there will be an opportunity to be considered for the issuance of a fourth surf clam licence, and any path forward will have to consider the associated risks.

DFO has not yet canvassed the Indigenous partners to assess their views in detail about the partnership, though some media coverage seems to indicate substantial support for it.

INTERDEPARTMENTAL CONSULTATIONS

s.20(1)(b)

The Department of Justice was consulted in the development of this memorandum.

s.21(1)(a)

s.21(1)(b)

NEXT STEPS

DFO officials will seek further details on the Agreement, assess the views of participating Indigenous communities, and will return with options,

Timothy Sargent
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (1)

1. Offshore Clam Resource Sharing Agreement – Overview of Key Terms

**Pages 26 to / à 31
are duplicates of
sont des duplicates des
pages 16 to / à 21**